IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 261 of 1995

with

CRIMINAL REVISION APPLICATION No 75 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

VIJAYSHANKER RAMBAHADUR

Appearance:

1. Criminal Appeal No. 261 of 1995

Mr. K.P. Rawal, APP for the appellant Petitioner No. 1

NOTICE SERVED for Respondent No. 1-3

2. Criminal Revision Application No. 75 of 1995

MR MJ BUDDHBHATTI for the applicant

Mr. K.P. Rawal, APP, for Respondent No. 4

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 25/11/2002

COMMON ORAL JUDGEMENT

1. Criminal Appeal No.261 of 1995 is filed by the State of Gujarat under Section 378 of the Code of Criminal Procedure ('Code' for short), challenging the judgment and order dated January 3, 1995, passed by the learned Metropolitan Magistrate, Court No.15, Ahmedabad, in Criminal Case No.912 of 1989, by which judgment and order, the respondents-original accused came to be acquitted from the charges framed against them for the offences punishable under Sections 447, 448,451, 427 read with Section 114 of the Indian Penal Code ('IPC' for short), on the ground that the prosecution witnesses, even though served with the summons, had not remained present.

2. Criminal Revision Application No.75 of 1995 has been filed by the original complainant, Lataben Sivaram Chauhan, against the original accused Nos.1 to 3 and the State of Gujarat, challenging the same judgment and order passed by the learned Metropolitan Magistrate, Court No.15, Ahmedabad, in Criminal Case No.912 of 1989, by which judgment and order, the respondents-original accused came to be acquitted from the charges framed against them of the above-stated offences punishable on the ground that the prosecution witnesses, even though served with the summons, had not remained present.

3. The complainant, Lataben Sivaram Chauhan, was running a tailoring shop in the premises in the name of Pradip & Company. The said premises belonged to one Girjeshanker Ramdulara, original accused No.3. According to the complainant, the said premises were leased to her father, Sivaram Kannayalal Chauhan, at the rate of Rs.25 per month, by the original landlord. It is the case of the complainant that, on the said land, Sivaram Kannayalal had constructed a wooden cabin and, in that cabin, a tailoring shop was being run. According to the complainant, said Sivaram Kannayalal was not having any children and, therefore, the complainant was adopted by Sivaram Kannayalal and the marriage of the complainant was also got performed by Sivaram Kannayalal who had adopted the complainant as daughter. It is the case of the complainant that accused No.3, Girjeshanker Ramdulara, was pressurizing Shivaram Kannayalal to vacate the premises. The record indicates that, as the complainant was apprehending that accused No.3, Girjeshanker Ramdulara, with the help of his henchmen,

may dispossess her from the said premises, she had filed HRP Suit No.676 of 1989 in the Small Causes Court, Court No.6, Ahmedabad, on March 13, 1989, and had obtained an ex-parte ad-interim injunction restraining the original accused No.3 and his persons from dispossessing her from the disputed premises. As per the allegations made in the complaint lodged by Lataben before the Maninagar Police Station, on the night of March 18, 1989, the original accused No.3 and other accused persons had illegally trespassed into the cabin and had forcibly took the possession and caused damage to the articles lying in the said disputed premises. The complaint lodged by Lataben was registered at Maninagar Police Station as C.R. No.I-96/89. After completion of the investigation, chargesheet came to be filed by the Maninagar Police Station in the Metropolitan Magistrate Court, Ahmedabad, against the three respondents (original accused) for the offences punishable under Sections 447, 448, 451, 427, 140 and 114 of the IPC, which was registered as Criminal Case No.912 of 1989.

4. The record indicates that, on March 13, 1990, the respondents had filed an application under Section 309 of the Code for staying the proceedings of Criminal Case No.912 of 1989 till disposal of HRP Suit No.676 of 1989 filed by the original complainant in the Small Causes Court, Ahmedabad. The record indicates that no orders were passed on the said application. The rozkam of Criminal Case No.912 of 1989 shows that, on many dates, the original accused had not remained present before the Metropolitan Magistrate Court, Ahmedabad, and, abruptly, the learned Metropolitan Magistrate, Court No.15, Ahmedabad, by judgment and order dated January 3, 1995, acquitted the original accused from the charges framed against them on the ground that the prosecution had not examined the witnesses even though the summons were duly served on them, which has given rising to filing of the Criminal Appeal by the State of Gujarat and the Criminal Revision Application by the original complainant. As common question of facts and law arise for my consideration, I propose to dispose of the Criminal Appeal and the Criminal Revision Application by this common order.

5. I have heard learned Additional Public Prosecutor, Mr. K.P. Rawal, for the State and learned advocate, Mr. M.J. Buddhabhatti, for the original complainant. Learned Additional Public Prosecutor, Mr. K.P. Rawal, and learned advocate, Mr. M.J. Buddhabhatti, have taken me through the entire record and

proceedings of Criminal Case No.912 of 1989. The original accused are duly served, but they have not appeared nor they have engaged advocate.

6. In various decisions, the High Court has laid down the procedure and guidance for the trial magistrates that the accused persons should not be acquitted on the ground that no witnesses were examined by the prosecution. It is the duty of the trial magistrate, before discharging or acquitting the accused, to secure the presences of the witnesses to be examined on behalf of the prosecution for deciding the case on merit. The rozkam does not indicate that any such steps in that direction were taken by the learned trial magistrate before acquitting the respondents-original accused. In the case of State of Gujarat vs. Kirit Maganbhai Patel, reported in 1993 (1) GLR 674, the learned Single Judge of this Court has ruled that it is the duty of the Court, the public prosecutor, the process serving agency, investigating officers to see that the offenders are brought to book and, once chargesheet is filed, the Court should decide the same on merits rather than adopting slip-shod method of acquitting the accused. The same principle is laid down by this Court (i) in the case of State of Gujarat vs. Butasing Indrasing, reported in 1990 GLR 26; (ii) in the case of State of Gujarat vs. Gulamnabi Alias Fakir Mohmad, reported in 1990 GLR 60; (ii) in the case of State of Gujarat vs. Sypoi Alambhai Jamalbhai, reported in 1990 GLR 122.

7. The learned advocates appearing for the parties have taken me through the entire rozkam of Criminal Case No.921 of 1989 of the Court of Metropolitan Magistrate, Court No.15, Ahmedabad. The rozkam indicates that the learned trial magistrate had not taken due care and pain to get the witnesses served by the proper summons and, in a haste and slip-shod method, had acquitted the respondents-original accused of the serious charges framed against them. Once charge was framed against the respondents-original accused, it was the duty of the learned trial magistrate to decide the case on merits rather than adopting slip-shod method of acquitting the accused on the ground that the prosecution had failed to examine the witnesses. The respondents cannot be permitted to go scot-free without any trial. The procedure adopted by the learned trial magistrate requires to be seriously deprecated.

8. As a result of foregoing discussion, Criminal Appeal No.216 of 1995 is allowed. The impugned judgment and order dated January 3, 1995, passed by the learned

Metropolitan Magistrate, Court No.15, Ahmedabad, in Criminal Case No.912 of 1989, is quashed and set aside. The matter is remanded to the trial Court with a direction to proceed ahead by affording fair and reasonable opportunity to examine prosecution witnesses and to dispose of the case on merits according to law. As Criminal Case No.912 of 1989 is an old case, the learned Metropolitan Magistrate shall make all the endeavours to dispose of it as expeditiously as possible, preferably within one year from the receipt of writ of this order. Office is directed to send back R & P to the trial Court forthwith along with copy of this common judgment.

9. In view of the order passed in Criminal Appeal No.216 of 1995, there shall be no order in Criminal Revision Application No.75 of 1995.

November 25, 2002 (M.H. Kadri, J.)
(swamy)